

In order to answer the question we must consider whether there is any material difference between section 18 of the Legal Profession Act and section 8A of the repealed Advocates and Solicitors Ordinance No. 4 of 1947. The learned Chief Justice is of the view that there is no fundamental change between them. We take a different view. In former times only one class of persons, viz., those who have special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia would be given consideration. Examples are many. In 1970 Mr. Michael John Mustill Q.C. (now a judge of the High Court of the United Kingdom) and Mr. Edward Frederick Noel Gratiaen Q.C., a former Solicitor-General of Ceylon, were admitted to do a marine insurance case; in 1971, the late Sir Dingle Foot Q.C. was admitted to appear in a sedition case; in 1974, Mr. R.J. Burrell Q.C. was admitted to appear in a trade marks case. Those gentlemen were admitted because of their special qualifications or experience of a nature not available amongst advocates and solicitors in this country. Those days are now passed. There has been a change of attitude. The provisions enacted in section 8A have been repealed by the Legal Profession Act. Parliament has today given wider powers to the judge. He can now consider three categories of persons: a Queen's Counsel, a person who has special qualifications or experience for the purpose of such cause or matter or any advocate and solicitor who has been in active practice in Singapore for not less than seven years. That is a revolutionary change which will enable justice to be done.

We are therefore of the view that the learned Chief Judge has considered the present case on a wrong principle. He has applied the principle enunciated in *Re Graham Starforth Hill*, *supra*, which is a case under a law which has been repealed. He is clearly wrong. The judge in exercising the new discretion under section 18 is no longer required to have regard that the applicant possesses special qualifications and experience of a nature not available amongst local advocates and solicitors. Had there been the intention, we feel no doubt that the legislature would have expressed it.

That is not the end of the matter. The learned Chief Judge added that "except in very special cases no counsel from outside Malaysia should be given *ad hoc* admission solely for the purpose of a criminal case. The position of civil cases is entirely different." With respect, we think he has gone too far. The words of Sir Raymond Evershed M.R. in *Allen v. Allen*, quoted in *Simpson v. Simpson*,⁽²⁾ appear to be apposite: "The material language of the section has, I think, always in these matters to be borne in mind, for if a court is prone too much to indulge in exposition and attempted definition, there is a risk that there will be substituted for the language chosen by Parliament some other forms of words." We conclude by saying that we see no justification for limiting the scope of section 18 in the manner in which it is suggested by the learned Chief Judge. The relevant words of the section are so clear that they cannot be construed restrictively as applying to special cases.

A singular feature of the forthcoming case is that

A it involves, *inter alia*, the question relating to the duties of a Member of Parliament and parliamentary privileges both inside and outside Parliament, which question is of considerable public interest and is being raised for the first time in this country.

B It is also an important point to note that the (U.K.) Official Secrets Act from which we have received inspiration is going through a revolutionary change. The Act has been criticized as being no longer efficacious in U.K. today. They are having a second look at it. In fact a bill based on the recommendation of the Franks Committee Report of 1972 is before the United Kingdom Parliament. We feel that one way of finding a possible answer to the question before us is to see how similar problems are dealt with in countries which have fundamentally the same law. In our view, considering other people's law is the usual way to see ourselves as others see us. Perhaps the correctness of our own decisions can be confirmed or some ideas for improvements may be discerned by looking at them. We have no doubt that the applicant may be able to assist us at first hand.

In the circumstances of this case, we are of the opinion that this is a fit and proper case to grant the application in terms of the motion. We would accordingly allow the appeal.

Appeal allowed.

E Solicitors: *Karpal Singh & Co.*

CHIN CHOY & ORS. v. COLLECTOR OF STAMP DUTIES

F [F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman and Chang Min Tat F.J.J.) March 22 and September 25, 1978]
[Kuala Lumpur — Federal Court Civil Appeal No. 123 of 1977]

Revenue Law — Stamp duty — Market value — Effective date — Date of agreement of sale or of execution of transfer — Stamp Ordinance, ss. 12A and 59.

G *Interpretation of statutes — Literal meaning — Taxing statute — Clear and ambiguous words — Stamp Ordinance, ss. 12A and 59.*

H This was an appeal from the decision of Abdul Hamid J., reported at [1978] 1 M.L.J. 46. The question raised was in relation to the assessment of the stamp duty on the transfer of property. The property in question was agreed to be sold in October 1971 for the agreed consideration of \$49,000 but the transfer was executed in 1973. The Collector of Stamp Duties in an adjudication exercise set a figure of \$65,000 as being in his view, the market value of the property at the date of the execution of the transfer. It was argued on behalf of the appellant that the duty payable on the instrument of transfer of the property should be based either on the money value mentioned in the instrument or the market value on the date of the sale and purchase agreement and not on the date of the execution of the instrument of transfer. Abdul Hamid J. held that in the light of section 12A of the Stamp Ordinance the market value of the property was that on the date of the execution of the transfer and not the date of the sale and purchase agreement and that therefore the Collector of Stamp Duty had made a proper assessment of duty in this case. The appellants appealed.

I **Held**, dismissing the appeal: there is no ambiguity whatsoever in the words and meaning of section 12A of the Stamp Ordinance and the Collector of Stamp Duty was therefore justified, where he has reason to believe that the consideration mentioned in the transfer did not reflect the proper market value at the date of the execution of the transfer, in imposing

the duty on what he properly and reasonably considered to be the market value of the property at the date of the execution of transfer.

Cases referred to:-

- (1) *R. v. Ramsgate (Inhabitants)* (1827) 6 B. & C. 712.
- (2) *Cape Brandy Syndicate v. I.R.C.* [1921] K.B. 64, 71.
- (3) *Canadian Eagle Oil Co. v. R.* [1946] A.C. 119, 140.
- (4) *Peninsular Land Development Sdn. Bhd. v. K. Ahmad* [1970] 1 M.L.J. 149, 150.
- (5) *Haji Osman bin Abu Bakar v. Saiyed Noor bin Saiyed Mohamed* [1952] M.L.J. 37.
- (6) *Bachan Singh v. Mahindar Kaur* [1956] M.L.J. 97.

FEDERAL COURT.

P.S. Gill for the appellants.

Mokhtar bin Sidin (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): Chia Ah Kow alias Chia Siew Seng, the fourth-named appellant, is one of twenty-three purchasers in a housing-estate who are all dissatisfied with the adjudication of the Collector of Stamp Duties on the amounts of stamp duties to be paid on the transfers to them of the lands and houses built on them. In his case, the record of appeal gives the agreement of purchase, the transfer and the adjudication. The facts in the other cases vary somewhat from his and from one another, but only as to the details of the purchases. The question to be decided is a question of law which is common to all of them. It was and is sufficient merely to refer to the facts in the case of Chia Ah Kow. It would have been sufficient consequently if the appeal record was to consist of documents relating to his case only.

On October 30, 1971, Chia Ah Kow executed an agreement for the purchase of a plot of land, of not less than 1,600 square feet, on which a two-storeyed shop-house was to be erected by the developers, for the inclusive price of \$49,000. On July 4, 1973, a transfer of the property agreed to be purchased into the name of Chia Ah Kow was presented at the Land Office for registration. The stated consideration was, naturally, the agreed price of \$49,000. Between these two dates, the house was erected to the specifications contained in the agreement of purchase. That is an accepted fact. It is also a fact of sufficient notoriety to be duly taken notice of by the court that between these two dates, properties had appreciated considerably in this country. It is a fact adverted to by counsel for the appellant in his written submission.

There was and is not the slightest suspicion anywhere that the sum of \$49,000 was not actually paid to the developers by the purchaser. But in the circumstances, the Collector of Stamp Duties (the respondent in the appeal), in an adjudication exercise laid before him by the purchaser's solicitors, set a figure of \$65,000 as being, in his view, the market value of the property. He therefore assessed the stamp duty to be paid on this valuation. The difference in the stamp duty levied and what the purchaser, as advised, thought he should pay was only \$160. But, the cumulative effect of the 23 cases was, however, sufficient to take the matter up

A to the High Court on appeal from the decision of the respondent and to this court.

Both the Collector of Stamp Duties and the High Court dealt with the question, with respect, correctly, as essentially a matter of the interpretation of section 12A of the Stamp Ordinance 1949 as amended by Act 60 of 1967. This particular section reads as follows:

B "12A. For the purpose of assessing the value of any property which is the subject of a transfer or settlement, such value shall be taken to be:

(a) the money value, if any, mentioned in the instrument of transfer as the consideration for the transfer or settlement; or

(b) the market value, as on the date of execution, of the property transferred or settled,

C whichever be the greater:

Provided that the officer before whom the instrument of transfer is tendered for registration may accept the consideration mentioned therein as being the market value, unless he shall have reason to believe otherwise."

D Both of them came to the conclusion on the interpretation of this section that the market value being greater should prevail over the agreed consideration or money-value, as the proper figure for the assessment of the stamp duty to be paid on the instrument of transfer.

E Both also held that the date for the determination of the market value was the date of the execution of the transfer. The appellant, however, contended and still contends that the date should be the date of the agreement.

F The appellant had a further and somewhat novel contention that stamp duty should only be imposed on the value of land, without taking into consideration the value of the house erected on it. The High Court rejected this contention. Before us, it is not pursued.

G Abdul Hamid J. in the High Court was of the view that having regard to the plain and unambiguous words of the section, and particularly, having regard to the words "instrument of transfer" in sub-section (a) and "the date of execution" in sub-section (b), the section clearly laid down that the assessment of stamp duty should be on the market value of the property, if greater than the money value, at the date of the execution of the transfer and not at the date of the agreement of sale and purchase.

H It may be apposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.

I "It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed,"

per Bayley J. in *R. v. Ramsgate (Inhabitants)*.⁽¹⁾ We bear in mind the well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language (see *Maxwell on the Interpretation of Statutes*, 11th Edn., at p. 278), but this rule of law also means that where the language of an Act of Parliament clearly imposes a charge, then the court

fastened with the duty not merely to interpret that Act but also to apply the law must give expression to the will of Parliament.

"In a Taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,"

per Rowlatt J. in *Cape Brandy Syndicate v. I.R.C.*,⁽²⁾ approved by Viscount L.C. in *Canadian Eagle Oil Co. v. R.*⁽³⁾ Or as expressed in *Maxwell's Interpretation of Statutes*, *ibid*, at pp. 4-5:

"The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just and expedient... However unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect. When once the meaning is plain, it is not the province of a court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words."

We agree, with respect, that there is no ambiguity whatsoever in the words and meaning of section 12A. Under it, the Collector of Stamp Duties has a function to perform which goes beyond a discretionary exercise of his powers. Strictly construed and on a proper interpretation, the section imposes on him the duty to consider whether the consideration in the instrument of transfer, the money value, reflects the proper market value of the object of the transfer at the date of the execution of the transfer. If it does, and not merely because it agrees, which it invariably would, with the consideration of the agreement, then under sub-section (a) and under the proviso to the section, he imposes the relevant duty on this sum. If it does not, that is, if he has reason to believe, as under the proviso, that the consideration mentioned in the transfer does not reflect the proper market value at the date of the execution of the transfer, then he must act under sub-section (b) to impose a duty on what he properly and reasonably considers to be the market-value of the property.

Before concluding, we should, if only out of deference to the arguments of counsel for the appellants, touch on his reference to various judgments and *dicta* that say that a vendor in an agreement of sale upon receipt of the purchase money becomes in equity a trustee for the purchaser: see, *inter alia*, *Peninsular Land Development Sdn. Bhd. v. K. Ahmad*.⁽⁴⁾ With respect, we find his point somewhat difficult to grasp. Matters between vendors and purchasers are surely entirely different from the question of stamp duty. To use the words in the passages from *Haji Osman bin Abu Bakar v. Saiyed Noor bin Saiyed Mohamed*⁽⁵⁾ and *Bachan Singh v. Mahinder Kaur*,⁽⁶⁾ which were quoted and referred to in the judgments of the Federal Court in *K. Ahmad's* case, the right *ad rem* which the purchaser acquires on performing his part of the agreement to purchase, is only as against the vendor and this right becomes a right *in personam* only when he seeks to register his purchase in the Registry of Titles. It is then that the role of the Collector of Stamp Duties is activated. And, in this role, under section 12A, the Collector must impose a duty on a valuation which could be the consideration in the instrument of transfer, if he accepts it as being equi-

valent to the market value of the property at the time of the execution of the transfer, but if this consideration is, in his opinion, lower than the market value of the property at the time of the execution of the transfer, then on the higher figure of the market value.

For these reasons, we agree with the decision of the High Court and dismiss the appeal with costs.

Appeal dismissed.

Solicitors: Messrs. Gill & Tang.

MRS. KOK WEE KIAT v. C KUALA LUMPUR STOCK EXCHANGE BERHAD & ORS.

[F.C. (Raja Azlan Shah, Wan Suleiman and Syed Othman F.J.J.) August 9 and September 25, 1978]
[Kuala Lumpur — Federal Court Civil Appeal No. 8 of 1978]

Practice and Procedure — Application that particulars filed in reply to defence be struck out — Particulars — Particulars setting out evidence — Libel — Conspiracy to defame — Whether claim of conspiracy to defame had merged with claim for libel — R.S.C. 1957, O. 19 rr. 22 and 27, O. 25 r. 4.

Torts — Libel — Conspiracy to defame — Whether claim of conspiracy to defame had merged with claim for libel.

This was an appeal from the decision of Abdul Hamid J. reported at [1978] 2 M.L.J. 123. The appellant in this case had claimed damages from the Stock Exchange, the first respondent for breach of contract of service, from second to eighth respondents, who were directors of the Stock Exchange and the ninth respondent its General Manager for damages for conspiracy to defame and lastly against the second to ninth respondents or each of them or alternatively the first respondent damages for libel. The defence of the second to eighth respondents was shortly that the summary termination of the appellant's services was because of her unsatisfactory conduct which was sufficient to warrant her dismissal and that in any event the words contained in the letter of termination of service were not defamatory of the appellant. The ninth respondent said that as an employee of the Stock Exchange he was in no way concerned with the matters complained of by the appellant. The appellant filed a reply and in her reply she filed particulars which ran to 61 pages. On the application of the respondents, the learned trial judge held (1) that as the appellant had unnecessarily set out the evidence in the particulars, the reply should be struck out with leave to put in such other reply as she may be advised; (2) that the claim to "conspire to defame" had merged with the claim for libel and therefore the allegations in the statement of claim referring to the conspiracy to defame should be struck out. The appellant appealed.

Held, dismissing the appeal: (1) the order of the learned trial judge to strike out the reply with leave to file a fresh reply was correct and sufficiently clear as there was a world of difference between giving particulars of facts and matters from which malice is to be inferred and giving evidence by which they are to be proved;

(2) the conspiracy to defame had merged with the libel in this case and therefore the learned judge was right in making the order to strike out allegations in the Statement of Claim referring to the conspiracy to defame.

Cases referred to:-

(1) *Williamson v. London & North Western Railway Co.* (1879) 12 Ch. D. 787, 790.

(2) *Ward v. Lewis & Ors.* [1955] 1 W.L.R. 9, 11.

FEDERAL COURT.

Wong Weng Kwai for the appellant.

Eugene Lye for all the respondents except 2 & 9.